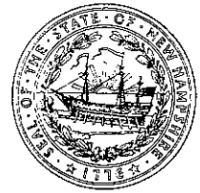




State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES

6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095

(603) 271-3503 FAX (603) 271-2867



PLEASE NOTE: Effective September 1, 2003, the street address is 29 Hazen Drive.

Christopher Crowe
d/b/a Timberwolf Logging
P.O. Box 445
Littleton, NH 03561

RE: Jewell Hill Road, Groton
DES Wetland File 2003-1769

NOTICE OF PROPOSED
ADMINISTRATIVE FINE
No. AF 03-042

November 24, 2003

I. INTRODUCTION

This Notice of Proposed Administrative Fine and Hearing is issued by the Department of Environmental Services, Water Division ("DES") to Christopher Crowe d/b/a Timberwolf Logging, pursuant to RSA 482-A and RSA 485-A:17 and Env-Wt 100 *et seq.* The Division is proposing that fines totaling \$3,500 be imposed against Christopher Crowe, d/b/a Timberwolf Logging for the violations alleged below. **This notice contains important procedural information. Please read the entire notice carefully.**

II. PARTIES

1. The Department of Environmental Services, Water Division ("DES") is an administrative agency of the State of New Hampshire, having its principal office at 29 Hazen Drive, Concord, NH.
2. Christopher Crowe, doing business as Timberwolf Logging ("Timberwolf") is an individual having a mailing address of P.O. Box 445, Littleton, NH 03561.

III. SUMMARY OF FACTS AND LAW SUPPORTING CLAIMS

1. Pursuant to RSA 482-A, the Department of Environmental Services ("DES") regulates dredging, filling, and construction in or on any bank, flat, marsh, or swamp in and adjacent to any waters of the state. Pursuant to RSA 482-A:11, I, the Commissioner of DES has adopted Wt 100 *et seq.* to implement this program.
2. Pursuant to RSA 482-A:13 and RSA 482-A:14, III, the Commissioner is authorized to impose fines of up to \$2,000 per violation for violations of the statute, of rules adopted pursuant to the statute, or of any order or permit issued under the statute. Pursuant to RSA 482-A:11, I, the Commissioner has adopted Env-C 614 to establish the schedule of fines for such violations.
3. Pursuant to RSA 485-A:22, V, the Commissioner is authorized to impose administrative fines of up to \$2,000 per offense for violations of RSA 485-A:17, rules adopted under RSA 485-A:17, and permits issued under RSA 485-A:17. Pursuant to RSA 485-A:22, the Commissioner had adopted Env-C 603.02 to establish a schedule of fines for such violations.

4. Yankee Forest LLC ("Yankee") is the owner of land located on Jewell Hill Road, Groton, N.H., more particularly described on Town of Groton Tax Map 6 as Lot 113 ("the Property").

5. Wagner Forest Management Ltd. ("Wagner") is a forest management company with a mailing address of PO Box 160, Lyme, NH 03768.

6. Christopher Crowe, doing business as Timberwolf Logging ("Timberwolf") entered into a written agreement on December 4, 2002, with Wagner to perform a timber harvest on the Property. The contract, among other things, requires Timberwolf to do the following:

"All State, Federal and Local laws will be complied with on Wagner managed lands at all times. Any applicable Best Management Practices will be implemented."

"Extra precautions need to be taken during times when operating in wet conditions. Shutting down parts of the job during these wet times will prevent costly down time and possible remedial work."

7. On May 8, 2003, Wagner, on behalf of Yankee, filed a Notice of Intent to Cut Wood or Timber.

8. On September 12, 2003, Steven Sherman, Forest Ranger from the Department of Resources and Economic Development ("DRED") issued an Official Notice to Michael Powers of Wagner. The specific violation alleged in the Official Notice is as follows: "Ruts in skidder trail caused runoff to pool up and create a mud hole – alteration of terrain. Recommended action: Continue with excavator, water bar trails and clean up mud."

9. On September 26, 2003, Division personnel conducted an inspection of the Property and observed the following:

a. Skid roads had been constructed on side hill locations without ditching the uphill side of the roadway to intercept runoff;

b. Significant sediment was observed running down ruts in a skid trail and into a forested wetland. The sediment covered at least 500 square feet and was measured to be at least 18" deep within the wetland;

c. Ruts between 18" and 24" deep were observed within the skid trail;

d. A poled ford had recently been removed from an intermittent stream. The stream was flowing at the time of the inspection. Downstream of the crossing, the water from the brook was flowing dark brown for at least two hundred feet; and

e. No erosion and siltation controls were observed within this area.

10. On September 30, 2003, DES personnel spoke with Christopher Crowe by telephone. He confirmed that he had logged the site in June or July.

IV. VIOLATIONS ALLEGED AND PROPOSED ADMINISTRATIVE FINES

1. Timberwolf has violated RSA 482-A:3, I by placing 500 square feet of sediment in a wetland. For this violation, Env-C 614.02(a)(1) specifies a fine of \$500.
2. Timberwolf has violated RSA 482-A:3 by failing to comply with best management practices, specifically by:
 - a. Constructing skid roads on side hill locations without ditching the uphill side of the roadway to prevent surface runoff;
 - b. Failing to install erosion control measures on the Property; and
 - c. Failing to stabilize haul roads and skid trails.

For these violations; Env-C 614.06(f) specifies a fine of \$2,000.

3. Timberwolf has violated RSA 485-A:17 by failing to comply with BMPs, specifically by removing a poled ford during periods of high stream flow, resulting in turbidity to an intermittent stream. For this violation, Env-C 603.02 (e)(2) specifies a fine of \$1,000.

The total fine being sought is \$3,500.

VI. HEARING, REQUIRED RESPONSE

Timberwolf has the right to a hearing to contest the Division's allegations before the fine is imposed. A hearing on this matter has been scheduled for **Monday, February 2, 2004 at 9:30 a.m. in Room C-110** of the DES offices at **29 Hazen Drive** in Concord, NH. Pursuant to Env-C 601.06, **Timberwolf is required to respond to this notice.** Please respond **no later than December 29, 2003** using the enclosed colored form as follows:

1. If Timberwolf plans to attend the hearing, please sign the appearance (upper portion) and return it to the DES Legal Unit, as noted on the form.
2. If Timberwolf chooses to waive the hearing and pay the proposed fine, please sign the waiver (lower portion) and return it **with payment of the fine** to the DES Legal Unit.
3. If Timberwolf wishes to discuss the possibility of settling the case, please sign the appearance and return it to the DES Legal Unit **and** call the DES Legal Unit to indicate Timberwolf's interest in settling.

Christopher Crowe, d/b/a Timberwolf Logging is not required to be represented by an attorney. If Timberwolf chooses to be represented by an attorney, the attorney must file an appearance and, if a hearing is held, submit proposed findings of fact to the person conducting the hearing.

If Timberwolf wishes to have a hearing but is unable to attend as scheduled, Timberwolf must notify the DES Legal Unit at least one week in advance of the hearing and request that the hearing be rescheduled. If Timberwolf does not notify the DES Legal Unit in advance and does not attend the hearing, the hearing will be conducted in Timberwolf's absence in accordance with Env C 204.09.

VI. DETERMINATION OF LIABILITY FOR ADMINISTRATIVE FINES

Pursuant to Env-C 601.09, in order for any fine to be imposed after a hearing, the Division must prove, by a preponderance of the evidence, that the Timberwolf committed the violations alleged and that the total amount of fines sought is the appropriate amount under the applicable statute and rules.

Proving something by a preponderance of the evidence means that it is **more likely than not** that the thing sought to be proved is true.

If the Division proves that Timberwolf committed the violations and that the total amount of fines sought is the appropriate amount under the applicable statute and rules, then the fine sought will be imposed, subject to the following:

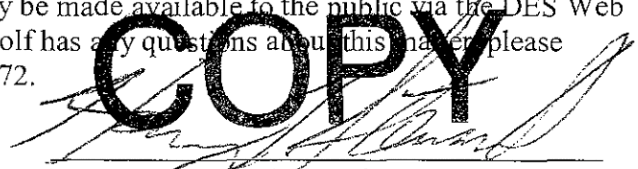
- * Pursuant to Env-C 601.09(c), the fine will be **reduced by 10%** for each of the circumstances listed below **that Christopher Crowe, d/b/a Timberwolf Logging proves, by a preponderance of the evidence**, applies in this case:
 1. The violation was a one-time or non-continuing violation, **and** Timberwolf did not know about the requirement when the violation occurred, **and** the violation has not continued or reoccurred as of the time of the hearing, **and** any environmental harm or threat of harm has been corrected, **and** Timberwolf did not benefit financially, whether directly or indirectly, from the violation.
 2. At the time the violation was committed, Timberwolf was making a good faith effort to comply with the requirement that was violated.
 3. Timberwolf has no history of non-compliance with the statutes or rules implemented by DES or with any permit issued by DES or contract entered into with DES.
 4. Other information exists which is favorable to Timberwolf's case, which was not known to the Division at the time the fine was proposed.

*******IMPORTANT NOTICE*******

An administrative fine hearing is a formal hearing. Any hearing will be tape recorded, and all witnesses will testify under oath or affirmation. At the hearing, the Division will present testimony and evidence to try to prove that Timberwolf committed the violation(s) alleged above and that the fine(s) should be imposed. **The hearing is Timberwolf's opportunity to present testimony and evidence that Timberwolf did not commit the violation(s) and/or that the fine(s) should not be imposed, or that the fine(s) sought should be reduced.** If Timberwolf has any evidence, such as photographs, business records or other documents, that it believes show that Timberwolf did not commit the violation(s) or that otherwise support Timberwolf's position, Timberwolf should bring the evidence to the hearing. Timberwolf may also bring witnesses (other people) to the hearing to testify on Timberwolf's behalf.

If Timberwolf wishes to have an informal meeting to discuss the issues, Timberwolf must contact the DES Legal Unit at (603) 271-6072 to request a prehearing conference.

Information regarding this proposed fine may be made available to the public via the DES Web page (www.state.nh.us.des). If the Timberwolf has any questions about this matter please contact the DES Legal Unit, at (603) 271-6072.

COPY

Harry T. Stewart, P.E., Director
Water Division

Enclosure (NHDES Fact Sheet #CO-2002)

cc: Mark Harbaugh, DES Legal Unit
Susan Weiss Alexant, DES Hearings and Rules Attorney
Jennifer J. Patterson, Sr. Asst. Attorney General, NHDOJ/EPB
Marjorie Swope, NHACC
Mary Ann Tilton, DES Wetlands Bureau
Public Information Officer, DES PIP Office

***** RETURN THIS PAGE ONLY *****

**CHRISTOPHER CROWE, D/B/A TIMBERWOLF LOGGING IS REQUIRED BY LAW
TO RESPOND TO THIS NOTICE.**

PLEASE RESPOND NO LATER THAN DECEMBER 29, 2003

APPEARANCE On behalf of Christopher Crowe, d/b/a Timberwolf Logging.

_____ I will attend the hearing scheduled for Monday, February 2, 2004 at 9:30 a.m. in Room C-110 of the DES offices at 29 Hazen Drive in Concord, NH.

Signature

Date

Name (please print or type): _____

Title: _____

Phone Number: _____

WAIVER OF HEARING On behalf of Christopher Crowe, d/b/a Timberwolf Logging.

_____ I certify that I understand my right to a hearing regarding the imposition of the proposed administrative fine and that I hereby waive those rights. The fine payment in the amount of \$3,500 paid to "Treasurer, State of New Hampshire" is enclosed.*

** If payment is made by check, draft, or money order that is returned due to insufficient funds, pursuant to NH RSA 6:11-a, DES may charge a fee in the amount of 5% of the face amount of the original check draft, or money order or \$25.00, whichever is greater, plus all protest and bank fees, in addition to collecting the amount of the original check draft, or money order.*

Pursuant to Env-C 203.05 please provide the following information:

Signature

Date

Name (please print or type): _____

Title: _____

Phone Number: _____

RETURN THIS PAGE ONLY TO:

Michael Sclafani, Legal Assistant

Department of Environmental Services ~ Legal Unit

6 Hazen Drive, P.O. Box 95

Concord, NH 03302-0095